

PLANNING BOARD MINUTES  
March 28, 2018

Present: Chairman Stephen Garvin, John Hincks, Charles Karustis, Nancy Kilcoyne, Meagen Donoghue, Director of Planning and Community Development and Beth Suedmeyer, Environmental Planner.

Absent: Peter Abair, and Justin Finnicum.

The statutory requirements as to notice having been complied with, the meeting was convened at 7:30 p.m. in the Lower Town Hall.

**Public Hearing – Stormwater Management Permit – Lot 11 Carriage Way, (Assessor’s Map K04-0511)**

At 7:30 p.m., Chairman Garvin called the meeting to order, and stated that the application was withdrawn without Prejudice on March 7, 2018.

On motion duly made and seconded, it was unanimously:

VOTED: Close and withdraw the public hearing for Stormwater Management Permit – Lot 11 Carriage Way, (Assessor’s Map K04-0511).

**Deliberation on Conditions of Approval – Stormwater Management Permit – Willow Hill School, 98 Haynes Road, (Assessor’s Map D09-0400)**

At 7:35 p.m., Chairman Garvin opened the meeting for deliberation on Conditions of Approval. Ms. Suedmeyer stated that the project was discussed and reviewed at the past meeting and tonight’s task is to review the conditions outlined in the decision. She added that an outstanding item with the plan set is that she has requested and not yet received stamped and signed plans. Architect Tom Peterman, representing the Willow Hill School, was on vacation and this may have contributed to the delay. Ms. Suedmeyer stated that if the Board wanted to approve a condition to that effect it could be done or trust that those signed documents are forthcoming. Staff and the Board were satisfied that the stamped and signed plans would be forthcoming.

Chairman Garvin suggested the Willow Hill School present the final signed plan set to staff.

Mr. Karustis noted a typographical error on page 5. Ms. Suedmeyer recognized the amendment.

On motion duly made and seconded, it was unanimously:

VOTED: To approve Conditions of Approval – Stormwater Management Permit – Willow Hill School, 98 Haynes Road, (Assessor’s Map D09-0400), as amended.

**ANR – Lot 5 Marlboro Road (Assessor’s Map D09-0600)**

Ms. Donoghue presented the application for an ANR for Lot 5 Marlboro Road (also known as 0 Marlboro Road). She explained that the owners are seeking to sell a portion of the larger lot and propose to divide it into one unbuildable parcel and a buildable lot

Mr. Hincks asked what the difference between a parcel and a lot is. Ms. Donoghue replied that a “lot” is buildable and a “parcel” is non-buildable. Ms. Donoghue included that the non-buildable language is written on the plan.

On motion duly made and seconded, it was unanimously:

VOTED: To endorse the ANR (Approval Not Required) – Lot 5 Marlboro Road (Assessor’s Map 09-0400).

Board members signed the ANR.

### **Minutes for Review**

Ms. Donoghue stated that three sets of minutes will be reviewed for next meeting, and added that the minutes for February 28, 2018 and the minutes for March 14, 2018, were not presented tonight; since they were being revised.

### **Discussion of Master Plan**

Chairman Garvin opened the discussion for the Master Plan. Ms. Donoghue presented an update on the Master Plan, stating that at last meeting, the Board discussed having the Town Manager review the Master Plan, but due to recent storms and other events; the Town Manager was unable to meet sooner. Ms. Donoghue did affirm that she and Town Manager Rodrigues met on Monday and discussed the process. She detailed that there was a bit of a timing setback, but Town Manager Rodrigues did like the document, and suggested that Town Counsel review it before moving forward. Ms. Donoghue stated that she had not heard anything from Town Counsel yet, but after approval, the RFP can be put on COMMBUYS, the MA Register for RFPs of this nature, and will also be put on the MassPlanners listserv. She stated that it was her hope that the RFP would go out in the next week or so. She indicated if she puts the RFP out before the next meeting, she will inform all members of the Board.

### **Administrative Report**

Ms. Suedmeyer informed the Board that the applicant from 12 Kato Summit, will come before the Board on April 11, to discuss a violation of Stormwater Permit Conditions. She added that the applicant installed a driveway that was over two times the area permitted. She added at the April 11 meeting, the applicant will be requesting a permit amendment. Ms. Suedmeyer stated that the Planning Staff will have a meeting with the applicant tomorrow to firm up the requirements from the civil engineer who is working on the project. She added that the engineer is redoing the drainage calculations and will be presenting the information for the Board. She suggested that it might be wise to have the peer reviewer review the situation before the meeting, as there is a matter of drainage from the impervious area to the originally proposed swale and rain garden.

Mr. Hincks recapped that the size of the driveway impacted the plan for stormwater management. Ms. Suedmeyer affirmed and indicated the applicant tried to do quick calculations to increase the capacity of the swale and the rain garden. Now, the runoff is unable to be captured through that system. She concluded by saying Town staff will review the applicant’s suggestion to address the additional runoff.

Ms. Donoghue said that she will be presenting the Marijuana bylaw at the Board of Selectmen Meeting on Tuesday, April 24 and invited any interested Board members to join her at that presentation.

Ms. Donoghue stated that the Board has a scheduled meeting on May 9, and May 7 is Town Meeting. She suggested that the Board consider rescheduling the Planning Board Meeting of May 9, should Town Meeting become more involved and go beyond one day.

Chairman Garvin asked how many numbered items are on warrant, in order to anticipate how long the town meeting might take. He suggested reviewing the warrant, in order to get a better idea.

**Continued Public Hearing – Stormwater Management Permit – 69 and 71 Brewster Road, Assessor’s Map H10-0100 & H10-0900)**

Present: Molly Obendorf, of Stamski and McNary, Inc., and Matthew Watsky, Attorney for the Applicant.

At 7:51 p.m., Chairman Garvin opened the hearing for 69 and 71 Brewster Road.

Ms. Suedmeyer updated the related events from the previous meeting and said the Planning Board was still waiting on additional documentation regarding the deed restriction for the property. She added that Planning had just received the proposed boundary for the deed restriction, and the Board did not have time to review the plan for the previous meeting. She informed the Board that over the last two weeks, the Department has had some interaction with the applicant and the design team and received the deed restriction proposed for the property. She explained that she sent that deed restriction document to Town Counsel, for review. She added Town Counsel recommends the Board consider requesting a Conservation Restriction subject to the requirements of EEA. She stated that the condition related to this deed restriction is also included in the draft decision.

She also detailed that at the last meeting, the Board discussed the possibility of requesting a landscape plan but decided not to pursue this. However, Ms. Suedmeyer later spoke to peer reviewer Janet Bernardo, who expressed concerns regarding the steep slopes and their stabilization. Ms. Suedmeyer suggested the Board consider some additional plantings of more deeply rooted shrubs or jute netting for stabilization. She added she is interested in hearing from the engineer as to how much area actually exceeds the 3:1 slope annotated in the landscape plans.

Mr. Karustis said the Board just received the response from the applicant’s attorney at about 5:30 p.m. this evening and did a brief review. He questioned how many of the outstanding issues are a matter for the Board, vs. what should be worked out with Town Staff and the applicant.

Ms. Suedmeyer responded stating there are a few items that Staff wants the Board to weigh in on. She added Town Counsel is still reviewing the draft decision. She added that the extent of the boundary is something that requires clarification tonight, as well as some of the questions about conditions.

Mr. Watsky stated there are a number of issues that he wanted to work through tonight and wanted to narrow the scope of questions before going forward at the next scheduled meeting. He said that his first question was that requests from Staff indicate that more land is being restricted than what is shown on the plan. He opined it is not practical to make the changes that are being requested. He added that the proposed restriction area is where it needs to be at this point. He maintained that the applicant originally showed a plan with somewhat jagged edges and those lines have been straightened out for ease of bounds. Mr. Watsky proceeded to go over the restriction areas on the plan and stated that he wanted some feedback from the Board. Mr. Watsky reviewed the focus area with the Board.

Chairman Garvin maintained that the limit of work has to be clearly delineated. Mr. Watsky replied that the limit of work is shown on the plan. He added his concern is the distinction between having permit conditions, which can be later modified if there is a violation of the permit. However, he continued, a

violation of a CR while in construction, would make it impossible to fix a problem. He stated that he is expecting that the permit conditions will be very restrictive.

Chairman Garvin agreed that dealing with a CR issue during construction would be a problem.

Mr. Watsky said that he was seeking clarification of the condition involving occupancy, getting the certificate of occupancy, and how it relates to the stabilization aspect when the first lot is completed.

Ms. Suedmeyer said that as standard practice each house would be an occupancy permit, as long as everything related to stormwater management and the slope stabilization is in place for that particular lot.

Mr. Watsky maintained that the condition, as written, is not clear about the intention to be applied that way. Ms. Suedmeyer acknowledged Mr. Watsky's comment.

Chairman Garvin referred to the draft and said that the applicant had a typographical error at the end of the covenant section and suggested that Mr. Watsky make correction. Mr. Watsky acknowledged the error and said it would be corrected.

Mr. Karustis said that he thought that Staff needed to review the correct drawing of that boundary line, because he does not have the expertise in this area. He added that regarding the restriction, the Board still has the issue of perpetuity, and that the deed must be in perpetuity, and no other way.

Mr. Watsky said the deed restriction proposal would provide conditions relating to both the Planning Board and the Conservation Commission and added that the statute that provides this type of restriction states that it does last into perpetuity. He added that the only way that the restriction could be removed; would be if both the Planning Board and the Conservation Commission were to vote to remove it from the conditions of any permits and agree to have it rescinded from the line of title, which would be a very complicated appeal.

Chairman Garvin stated that Town Counsel has a different opinion about this.

Ms. Suedmeyer added that Town Counsel is recognizing the possibility of a 30-year cutoff for the deed restriction, under the M.G.L cited for the applicant's proposal.

Mr. Watsky said he would be happy to talk to Town Counsel about this.

Mr. Karustis said that further discussion is needed regarding this topic before any decision can be made.

Chairman Garvin asked Ms. Obendorf about slopes in the plan and wanted to know if the steepest slope reflected 2:1 and asked how many square feet might be involved.

Ms. Obendorf said that she did not know offhand but would calculate it.

Chairman Garvin said that the Board may want those calculations, and suggested utilization of jute meshing, or something more substantial; to be used at the steepest slopes.

Ms. Obendorf said that the plans would recommend jute mesh for seed, on that type of steep slope. Chairman Garvin recommended clarifying that on a plan note, and to provide the related square footage.

Mr. Hincks mentioned that New England seed mix might not be adequate and added that the Board has seen what happens when a slope fails. He added that grass plantings might not be enough and wanted as a condition a landscape plan to include shrubs.

Ms. Kilcoyne said her major concern was the potential failure of the slopes and stated she would like to see as much natural vegetation as possible, and wanted clarification on the limit of work line.

Mr. Watsky stated that there should be no questions about the grades as they are shown and drawn.

Ms. Suedmeyer stated the recommendation from both Horsley Witten and the Conservation Commission, was that deeper-rooted vegetation would be preferable with more than just the grasses. She said that this recommendation was based on what transpired with the lot next door, where the grass had established and then failed and had there been some deeper rooting vegetation, it might have helped to maintain the slopes. She offered that she could talk to Conservation Commission in more detail regarding the conditions on these slopes.

Mr. Hincks said that some amount of deeper rooted plant material, will help to stabilize the slope. Mr. Karustis agreed that there should be a vegetation mix there.

Chairman Garvin added that there are different types of jute meshing but if the slope is beyond a 2 ½ slope, a more extensive vegetation would be required, but a 3:1, is fine. He stressed that obtaining the additional calculations and notes would be helpful.

Mr. Watsky detailed that the Board wants a landscaping plan that includes the deeper rooting vegetation, shrubs, but the new homeowner must be given the directives as to what they must plan.

Chairman Garvin replied that the landscape plan, or layout plan could identify areas of slopes, steeper than 3:1, and be given suggested choices about ground cover, jute mesh, shrubs, and then allow the homeowner to make some decisions, from a slope retention perspective.

Mr. Watsky said that is a suggestion that his group could work with and stated the plan already has a notation specifying where mature trees are within the limit of work. He added they should be preserved wherever possible and use of meadow wild flower and shrubs are encouraged.

Chairman Garvin stated the Board is seeking elaboration with indication of where those slopes need the extra vegetation.

Resident David Ostrow, 36 Brewster Road, questioned if it is the Town's preference to have a Conservation Restriction enforceable for perpetuity, rather than a limited 30-year enforceable restriction. He wondered that if the Town is favoring the non-EEA restriction, how can the neighbors have input about the final decision regarding this important matter. He added the residents have concerns based on what happened with the fire at the adjacent property at 65 Brewster Road and also the prospect to eventual connecting of Brewster Road to Rt. 27.

Chairman Garvin replied that the applicant's counsel has stated that the restriction would be in perpetuity, so the Board has asked that the applicant's team, confer with Town Counsel, to be consistent in this process, as the Board asked that it be in perpetuity, and not a 30-year only enforceability, and that with a CR in place, Brewster Road would not be enabled to connect with Route 27.

Mr. Ostrow added that if a 30- year deed restriction was to be implemented, would there be opportunity for the abutters and neighbors to have input with this decision.

Chairman Garvin said that currently, the Board is asking for in perpetuity and there will be a continued hearing. He added if anything changes, the Board would encourage neighbors to be here. He recommended the residents check in with staff as well to ask if there was consensus on 30-year perpetuity. Chairman Garvin affirmed and said that as it appears now, all members of this Board are learning towards perpetuity. Chairman Garvin said that it is just a question of what the mechanism is, for getting there.

Ms. Suedmeyer stated that the discussion tonight addressed much of the specificity that Mr. Watsky and the Board were seeking relating to landscape requirements, draft conditions, as well as the EEA CR.

Chairman Garvin moved to continue with this hearing on April 11.

On motion duly made and seconded, it was unanimously:

VOTED: To continue the Public Hearing – Stormwater Management Permit – 69 and 71  
Brewster Road, (Assessor's Map H10-0100 & H10-0900) to April 11, 2018.

### **Meeting Schedule**

Chairman Garvin stated that the Board spoke earlier about the meeting schedule, and the possible concurrent Town Meeting schedule. Ms. Donoghue stated that the Board does have deadlines for new applications. Chairman Garvin agreed that the May meeting schedule, would have to be decided at the April 11 meeting.

Ms. Suedmeyer stated that the Board has a scheduled meeting for May 9, and the deadline for applications, might be before our next meeting.

Chairman Garvin suggested that the Board review the meeting schedule for May at the next Board meeting, and that the next meeting date was April 11, 2018.

At 8:50 p.m., Chairman Garvin made motion to adjourn the meeting.

On motion duly made and seconded, it was unanimously:

VOTED: To adjourn the meeting.